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UNIDENTIFIED MALE: Speakers, the recordings have been started.

MATHIEU WEILL: Thank you very much. My name is Mathieu Weill. I'm the ccNSO-appointed co-Chair of the CCWG-Accountability. Welcome to our second meeting of the Work Stream 2 efforts.

This meeting is our first meeting after Helsinki, and I would like to start by first of all noting the apologies from my fellow co-Chairs, Thomas Rickert and Leon Sanchez. You will have to bear with me as the only available co-Chair for this whole meeting. I hope this is no going to prove too challenging for you or for me and that we can still make this meeting constructive anyway.

That being said, I would also like to welcome our new members. As you have noted on the list, we have a new set of appointments of members from the GAC, which is a first of our chartering organizations; to renew its memberships for Work Stream 2. We're delighted to have as members now Kavouss Arasteh, Olga Cavalli, who was previously already a member, Pedro da Silva, Finn Peterson, and Andreea Todoran.

So a pretty good team from the GAC. It's really good to have renewed energy and members. Also, I think we are grateful to the previous members, who are hopefully going to stay engaged in our group if their duties allow, because, to me, of the tremendous contributions in our Work Stream 1 past.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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That being said, in opening I'd like to ask if anyone has any updates to Statement of Interest or is audio only and should be added to the rollcall at this point.

HOLLY GREGORY: Mathieu, this is Holly Gregory. I am on the phone and also on the Adobe chat room, but I have no capacity to type messages in.

MATHIEU WEILL: Thank you, Holly. Okay, I see the echo has been fixed. No one else? Excellent. So I think we are good to go for our agenda, which is displayed in the AC room. We have to finalize our potential submission for the public comment period on the draft ICANN Articles of Incorporation, so I would like to ask staff to display the latest exchange on this draft.

The comment period has been extended by a week to give us a little more wiggle room to finalize this submission after last week's exchanges. We have received a submission from our lawyers on the draft that we were considering, and think we had a small number of points to address but still need to address them probably one by one.

Number one was the discussion about future versus further [lows], which was most probably a drafting issue. I think we've received comment from the lawyers that it was probably just a drafting issue and we should just mention it as such.

Holly, would you like to confirm that or comment?

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HOLLY GREGORY: Yes, I would. It's not even a drafting issue. It's a typo that we pointed out to staff before the document was posted, and for some reason it didn't get captured. So I think in the comment all we should do is call it a typo.

MATHIEU WEILL: Okay. So unless someone objects, I would say let's update our comment and mention the typo. Okay. That enables us to move to Article 2, which was the use of "may" or "shall" on the global public interest mention, when it mentions that global public interest may or shall be determined from time to time by the multi-stakeholder community through an inclusive but a multi-stakeholder community process.

There were concerns about this term "may." I think we need to stay as close as possible to our report here.

Holly or Rosemary, would you like to share the feedback that you provided on this particular aspect so we have all elements and can conclude?

Holly?

HOLLY GREGORY: We believe that, from the legal drafting perspective, the word "may" is the appropriate word in the context. Specifically, it relates to the phrase "may be determined from time to time," which indicates that the determination of global public interest is made based on when the need for determination arises. It's not in any way used, nor do we believe that's appropriately read, to suggest that someone other than the multi-

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stakeholder community has a decision right in determining what the global public interest is.

I invite Rosemary to weight in if –

ROSEMARY FEI:

Oh, I agree. I've seen various alternatives proposed, and some of them are more explicit and a good bit longer. I wouldn't object to this, but I think what's here is fine. From a legal perspective, it means it's determined by the community and will be determined by the community when needed.

MATHIEU WEILL:

Thank you, Rosemary and Holly. I'm seeing some comment from Brett in the chat. But Brett, considering the input we're getting from lawyers – and of course the Articles of Incorporation are heavily intensive legal documents – do you really think we need to comment on this? Because obviously, if that sounds okay compared to our report, I think we need to stick to making sure we are within the scope of our recommendations and probably leave the choice of word – the words missing – to lawyers.

I see your hand is raised, Brett, so please take the floor.

BRETT SCHAEFER:

I think that, certainly, the determination of the GPI and that it should be done through a bottom-up multi-stakeholder community is within the remit of the CCWG-Accountability. We made that very clear in the report that we submitted.

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I also think that, to avoid of any kind of misinterpretation – I understand that the lawyers see this as very clear, but this is a document that is not only intended to be consumed by lawyers, but is also intended to be consumed and conveyed and read by non-lawyers and laypeople – the clearer we are in this, as long as we are not changing the legal obligations here – that we are simply clarifying them and making them clear to everybody else – is also the benefit.

I think Greg suggested text on this to make it crystal-clear that the process will be adjusted if necessary from time to time and is not mandatory. It also makes clear that if it is done from time to time, it will be done in a bottom-up multi-stakeholder process. I think Greg's suggested text is a vast improvement in that we have had a debate going back and forth over this. We've had to have the lawyers consulted on this text, which means that it is, at the very least, not necessarily readily apparent what it means to people who are not well-versed in California law. I think that if we can rectify that, then all the better. Thank you.

MATHIEU WEILL:

Thank you, Brett. I see Robin and Greg leaning in the same direction. Kavouss?

Kavouss, if you're speaking, we cannot hear you.

KAVOUSS ARASTEH:

Can you hear me?

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MATHIEU WEILL: Yes, I can hear you now.

KAVOUSS ARASTEH: Yes. Both texts are correct. However, the text proposed by Greg and supported by Greg or vice versa is clearer that it will be done from time to time. Then, if it is to be done, it should be done, that the [inaudible] shall be done to the [bottom-up] approach of multi-stakeholder is clearer and aligns with all the discussion that we've had.

So my preference is the text proposed by Greg and supported by Brett. Thank you.

MATHIEU WEILL: Thank you, Kavouss. Siva?

Siva, if you're speaking, we cannot hear you yet.

SIVA MUTHUSAMY: This is a question to the legal experts or the members of the team. When you talk about defining global public interest from a legal or non-legal perspective, what is the extent of accuracy needed for the definition?

For example, if we talk about inappropriate behavior, which is legally punishable, is there a rigid definition behavior in a school or a college or in an organization? And how do courts interpret what is appropriate and inappropriate behavior? That way, if there is enough global public interest, if even broad, that would satisfy the legal requirement for a definition for global public interest.

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Am I correct? Is there any [inaudible] associated with the legal definition of global public interest? Can someone clarify that?

MATHIEU WEILL:

Thank you, Siva. I'm going to turn to our lawyers. But I think the definition is required by our recommendation to be included in the Articles of Incorporation. So we're trying to stick to our report, rather than reinvent a definition.

I don't know if Holly or Rosemary could comment on this, and probably even more importantly, on whether Greg's suggested language, of which I feel several in the group are feeling more comfortable with than the previous language, would raise any issue on their side.

Holly?

ROSEMARY FEI:

I'm fine with the longer version. I don't think it means anything different, and if the group think it's clearer, I'm fine with it.

And you're correct. We were just trying to track the report with respect to defining global public interest.

MATHIEU WEILL:

Thank you, Rosemary. That's very useful. Considering that both languages are assessed as having similar effects by our lawyers and that one of them, the longer version, obviously creates a high level of comfort in the group, I think we can include our comments a suggestion to adopt this longer version as one that everyone feels more

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comfortable with, although we are aware that the effects are very similar.

So that would be our conclusion on this item, which is to be captured in the notes so that we can then finalize the comments. Seeing no objection to that and some ticking greens, that's a way forward.

Now, moving to the next item – actually, that was basically the only item. The rest was the conclusion. So we would have two very small comments to submit. One is a typo, and the other is the suggestion for a longer language.

With that, I'm seeing Brett's hand up for maybe another one.

BRETT SCHAEFER:

This is actually somewhat related. I was on the public comments page for the Articles of Incorporation, and I couldn't find the document where the explanation for the various changes to that document were provided. I wondered if that document could be circulated again.

The reason for my request is that, in the original Articles of Incorporation, Article 5E was deleted, and there was an explanation provided for that, along the lines that it was referring to the wrong section of the code. I noted that that exact text was also included in the Articles of Incorporation for the PTI, and I think that, if there is a legal issue there, we would want to point that out to the CWG for their notice so that they can make that correction in that Articles of Incorporation document. Thank you.

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ROSEMARY FEI: Can I speak to that, please?

MATHIEU WEILL: Sure, Rosemary. Please.

ROSEMARY FEI: The language Brett noted that we struck, which had been in ICANN's articles for some time, would be appropriate if ICANN were what is known in tax law as a supporting organization. It is not legally in that category of things. Because it isn't, you're not required to have it in the articles, but having it in the articles isn't wrong. If you're a supporting organization, it's true. In other words, that restriction about disqualified person control applies to you.

The PTI is, I believe, anticipated – I don't work on that. That's a Sidley matter, but my understanding from Sidley is that that is intended to be a supporting organization. So that restriction actually arguably makes more sense. It's still not required, but at least it is relevant to that entity in way that it is totally irrelevant to this entity and was creating a restriction that, in the context of an entity that's not a supporting organization, doesn't make any sense.

BRETT SCHAEFER: If I could add just a clarifying question to that, isn't the PTI envisioned to be separable, so it could be a separate body? Therefore, would that cause some concerns in this area?

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ROSEMARY FEI:

Well, it will be a separate legal entity, but if I understand it – Holly, feel free to weigh in if I got any of this wrong because, as I said, I don't work on PTI – initially it's a totally separate legal entity. It is a separate corporation. That's not an issue. But it's initially going to derive its public charity status from ICANN's public charity status. ICANN is recognized by the IRS as a 501-c3 public charity, rather than a private foundation. And it needs to be a public charity because private foundations are much more restricted.

The new PTI is not expected, as I understand it based on its financial arrangements, to be able to meet the test for being a public charity that ICANN meets. Therefore, it needs to meet another test, and one option is the supporting organization test, which is a way for a charity that doesn't have sufficiently broad public sources of support to meet a public charity test.

So I understand that's what's been advised on the PTI side. If PTI ever wants to leave, if the decision is ever made that it should leave, you would amend its articles to take that out.

MATHIEU WEILL:

Thank you, Rosemary. I think we can definitely move that conversation to the list. I will add an action item for staff to recirculate the previous answer that has been given to that question. Since it's at the interface of our group and the CWG, I think your explanation is quite good; it enables us to move forward at this point. And I'm sure, Brett, you'll find the material you're looking for in what was circulated before.

Holly, that's something related to this, or another item on the articles?

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HOLLY GREGORY: Yeah. I just wanted to say that this is a highly technical issue. We have looked at it. We are satisfied that it is advisable to have it in the PTI Bylaws and not advisable to have it in the ICANN Bylaws. And other than that, let's take it off because it's highly complicated stuff. But I think this is one where you should rely on your lawyers. We've got this one right.

MATHIEU WEILL: Thanks, Holly. So in terms of conclusions on this agenda item, I think Action Item #1 would be for the co-Chairs to amend the draft submission and submit it. I think we have a clear direction for that. And second Action Item is for staff to find these documents responding to Brett's request and re-circulate it on the list to ensure we all have the relevant documentation.

And with that, I think we can move to the next agenda item, which is this time moving us to Work Stream 2. And this is the much anticipated moment where we can review the candidates for rapporteur in the Work Stream 2 subgroups. You have then on the screen – I don't want to make any mistakes here, I'm being careful. First of all, I need to note a very small typo to Sebastien's last name which is spelled with two Ls. But you have recognized Sebastien on the Ombudsman.

We've received two [author] applications a couple hours ago, and I think one was from Jordan Carter to support Avri on Staff Accountability. And the other was from – I'm not sure I have the name right – but it was certainly on Transparency, and if someone can remind

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me of the – Chris Wilson – great to see new faces and names – to support on the Transparency subgroup.

Our suggestion – I mean, the suggestion from the co-Chairs and we've discussed this last week with Leon and Thomas – was to actually welcome all these applications and move forward with rapporteurs and co-rapporteurs as displayed on the slide. We are aware of the amount of work that's ahead of us on this and I think the experience from the CCWG shows that co-rapporteurs or co-Chairs are actually pretty effective at in showing continuity and balance. We are grateful to all those who applied, and we'd like to, if they could confirm their commitment to this important task, we would certainly move forward with this very good group of people for Work Stream 2.

So that would be our proposal for and now looking forward to your reactions, suggestions, and of course, comments. Starting with Kavouss. Kavouss?

KAVOUSS ARASTEH:

You are most welcome. They are devoted time, but one important element I wish to mention, and that is very, very, important, these distinguished colleagues shall maintain full impartiality and neutrality with respect to the subject that they are dealing with totally forgetting their nationality, affiliation, the law of the countries that they are, and they just listen to the community, to the participants, and conduct meeting on that day and do not push anything from their own particular personal interests. This is very important. With that condition, we agree with all of that. Otherwise, it might have problems. Thank you.

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MATHIEU WEILL:

Thank you, Kavouss. Indeed I should have mentioned that indeed the rapporteur function is a service to the group and the most important task is to ensure integrity of the discussion and the multi-stakeholder process where everyone can have a [vote] in the openness and constructiveness of the discussions is the main task of the rapporteurs as well as obviously summarizing to various discussions for the benefit of the CCWG which remains the only forum where we assess consensus.

So I think that's a good reminder. I would assume that everyone is aware of this, at least from the exchanges we've had. But it's a good reminder.

Any other comments on that proposed approach? I am seeing none, so I virtually launch a round of applause for these newly appointed rapporteurs and look forward to working together at moving these recommendations to point of consensus which hopefully we will reach not too far from now.

So that's excellent news. A renewed team. I'm impatient – and I know Thomas and Leon are as well – to start working with this distinguished and qualified team.

So the next slide now is more pragmatic and very practical. This is an information to that we are closing the Google Docs subgroup list, so any new subscription needs to go through the Accountability staff e-mail, and staff will shortly create the various e-mail lists and wiki pages for each of the subgroups and we will certainly, as mentioned in one of the e-mails Karen circulated, also initiate a discussion with the rapporteurs

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to organize the timing slots and all the logistics so that the subgroups can start working as soon as possible.

And remember that the groups remain open, so you can subscribe as you will. We encourage you to focus your energy on a small number so your contribution can have more impact. But obviously it's open and obviously recorded for the mailing list archives, I should say.

So that's Agenda Item #2. Kavouss, is that an old hand?

KAVOUSS ARASTEH:

Yes, I said that I may help [inaudible] meet other groups and I would like that the distinguished rapporteur would accept it from now that if I subscribe there would not be any problem at all. Thank you.

MATHIEU WEILL:

So there will be no problem, Kavouss. Just make sure your subscription is sent to the e-mail address of Accountability staff at [icann.org](http://icann.org) and you will be subscribed to whichever group you want to follow closely.

The next agenda item is related to one item that was outstanding in Helsinki. It's about the legal cost control mechanisms that have been part of many discussions with the chartering organizations as well as with the Board Finance Committee. And if you've read the latest correspondence from the Board Finance Committee carefully, you're aware that the agreement to support our Work Stream 2 effort with significant financial support from ICANN is still subject to one reservation which is that we can find a suitable way to make sure the

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mechanisms to control the legal costs, among other things, are described and agreed upon.

So this is more of a first reading and first discussion on this issue for our group to determine how we want to act in this regard in order to be financially responsible but also effective to support our group.

So can we have the next slide please?

This is a reminder of the Work Stream 2 topics. I think we can move to the next slide.

This slide reminds ourselves of what we're talking about in terms of Work Stream 2 support which is significant enough with staff support, with travel and meeting support, and remember we have one day face-to-face meetings before ICANN meetings. [Then comes] language services, engagement, communication, but also significant amount set aside for legal services to support our groups.

Can we move to the next slide?

So in terms of legal cost control, there are several questions. The first one, and obviously it is I think a rather traction towards reinstating a Legal Committee so that we can filter, analyze, refine, and approve the requests for legal advice, and also so that this group would determine which firm is best suited to respond to each of the requests. The idea is to have monthly meetings that would look into the various requests coming from the subgroups through their rapporteurs or co-rapporteurs and ensure obviously that the request really is a legal issue that requires legal expertise and not just a policy discussions where that would only

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be an opinion and that's where our groups are supposed to be working on the policy.

We have several options in terms of composition of this group. As you will remember we started the CCWG with a group of six people and one co-Chair, and then in the middle we switched to a more streamlined process where the co-Chairs acted as the Legal Committee. And so that's one of the questions is how many group members, whether it's only the co-Chairs or if we reintroduce a number of individuals in addition.

Then we have questions about – I think there's a lot of value in ICANN Legal being able to participate and we need to decide whether they would participate as a member, like it was a decision right or just a consultative voice as observer, whether the our external advisors Sidley and Adler would be invited to the meetings, part of the meetings, all of the meetings, or not invited to the meetings. And we made a note that the CWG Stewardship – I think it's not a Legal Committee, it's a Client Committee – but I think it's four people including the two co-Chairs that drive this group, so that's sort of an incentive to have a small number of people to be as effective as possible.

So that's the first question we have to ask ourselves: whether we reinstate the Legal Committee, with which composition, and whether we tweak the proposed architecture for that. I see a question from [Fanzani] about whether being a member observer affects costs. I'm not sure it does. Cost is a matter of time. Robin?

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ROBIN GROSS: I just think we should reinstate the Legal Committee that we had set up that hired Sidley and Adler. There's no point in reinventing the wheel. We already had a committee going on a lot of these issues and so I think it would be best to put it back in the hands of the committee members who already volunteered to do exactly this function a few months ago. Thanks.

MATHIEU WEILL: Thank you, Robin. I see Kavouss in the queue. Kavouss, please?

KAVOUSS ARASTEH Mathieu, my understanding is that if something has worked well, maintain it. And let's continue to work. Unless problem has been detected and we have to either correct that or reorganize that.

Could you kindly reply to the question, does the existing arrangement for the Work Stream 1 have any difficulty, shortcoming, and so on so forth? Couldn't we maintain that? My difficulty is that – not to spend too much time on this issue – rather go to the real work. Because it is very important. So that is the first question.

And the second question is that you talk about whether is the Secretariat or ICANN statute a candidate as a member in every organization similar to this [arrangement] they could attend as of advice but not in the decision making. Similarly, any advisor they could attend according to the wish of the group established, and then if they think that they should attend such meetings they will invite them and so on, so forth. But the decision will be made within those five or six or

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whatever number did decide. But my first question is that why we need to change the existing arrangement unless there is a difficulty is detected. Thank you.

MATHIEU WEILL:

Thank you, Kavouss. It's difficult to answer exactly what... The actual current arrangement is the co-Chair is acting as the Legal Committee, and it may have been appropriate when we were under a lot of time pressure during the work of Work stream 1, but the Legal Committee a more open approach seems to be appropriate in Work Stream 2 where time pressure is expected to be lower and more openness and more experience into managing lawyers may be useful in this committee in order to manage costs with even more efficiency and a more open process.

So that's the reason why we are honestly suggesting to reinstate a Legal Committee. The previous composition, which we should actually probably display or remind in the chat, is an excellent start, and if that's the direction that the group is taking – and I'm sensing some traction for that – I'm perfectly comfortable with that. The only note I was making was that it was a slightly larger group than the CWG Client Committee, but if you're all comfortable with this then let's move forward.

So what I'm taking away from this part of the discussion at this point is to reuse the Legal Committee as it was as a starting point, and I think that's probably a good way forward at this point. Of course, depending on confirmation by the various members of their renewed interest. Okay, so let's take that as our direction for the moment.

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Let's move to the next slide then.

The next slide is, if you've looked at the correspondence from the Board Finance Committee, they are suggesting that there needs to be a determination of who is the budget owner of some of these expenses. Not all, but basically those expenses that are outside of the core ICANN functions. So this slide is showing out those expenses that will be basically owned, and that is travel and meeting, legal services, as well as the other expenses, such as what we did with [inaudible] to have communication material easier to understand or other engagement fees.

What ownership means, and we've had good conversations with the Board Finance Committee in Helsinki about it. It's basically a similar role as the budget ownership within an organization implies, which means that you're not really signing checks. Obviously, the Legal Committee or the co-Chairs could not do that, but you need to track your budget against plan and provide regular updates. That would be supported by the PCSG, the staff team that's working on that.

The ownership also implies potential trade-offs. If there was a need for an extra meeting, we would have to find ways to maybe trade that off against lower levels of legal services and only when needed, request additional budget to the chartering organizations and the Board Finance Committee.

The question that was raised was who would be the budget owner? I think it's a good thing for the multi-stakeholder process to pioneer in a way and have the subgroup from the community take ownership for the

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costs of an initiative. There are different ways to approach this. It could be the whole CCWG accountability that could be the owner, but that's maybe too wide a group for effective ownership. It can be the co-Chairs, or it could be a dedicated committee such as this Legal Committee we've just discussed.

In case you ask me what my preferred way would be, it would be this Legal Committee because I think that's where we'll be taking most of the significant budget decisions that will impact the process. Once again, this is a first reading, so I'd like to hear reactions, comments, suggestions, or opinions on what will be an appropriate group to own these decisions related to the budget.

I think Tijani's in the queue. Tijani, please.

TIJANI BEN JEMAA: [inaudible].

MATHIEU WEILL: I can hear you.

TIJANI BEN JEMAA: Hello? [inaudible].

MATHIEU WEILL: Yes, Tijani.

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UNIDENTIFIED MALE: Yes, [we can] hear you.

TIJANI BEN JEMAA: Very good. I am sorry but I'd like you not to overload the Legal Committee. Do the work of the legal aspect/issues, and the management of the budget should be done by the co-Chairs in my point of view. Thank you.

MATHIEU WEILL: Thank you, Tijani. That means that co-Chairs might need to tell the Legal Committee there's no fund anymore for additional requests, but since the co-Chairs will be represented in the committee, I guess that can be worked out. Kavouss?

KAVOUSS ARASTEH: Legal Committee to do the legal work and details of the managerial decisions or [inaudible] decisions should be made by the co-Chairs. Should you need any advice, either you come to the whole CCWG [inaudible] two people, or you consult other people as you deem appropriate. I don't want to give to the Legal Committee and overload them with this sort of things. Thank you.

MATHIEU WEILL: Thank you, Kavouss. The point is well noted. Are there any different views in the group? Otherwise, it's a pretty clear direction. Good, so let's move to the next slide then.

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The next slide is related to specific decisions that the Legal Committee might have to make on allocation of specific requests to either ICANN legal or Sidley or Adler or even [inaudible]. I don't know. It's just the question of how this allocation of requests can be made. There are two different options that have been voiced in the preparatory work. One would be to go first to ICANN legal to ask whether they can provide the answer, and if they cannot or their answer is judged insufficient, then the committee would turn to external legal sources for the request.

That's the first option, which is basically so it would turn to ICANN Legal, and when they cannot or deliver that's felt insufficient, then we move to external counsel. Option two would be to assess this on a case-by-case basis. Of course always allowing ICANN Legal if they have an answer already available to share it immediately to avoid duplication of costs, but still the decision would be the committee's, which would have to obviously take into account the costs, the delays, the skills, as well as the potential requirement for independent advice.

Those are the two different options currently being discussed. As previously, I'm inviting comments, preference to be expressed so we obviously narrow this group of choices and move forward with the more detailed submission.

I am seeing some – Robin, Sabine, Ed – moving to option two. Keith has a slightly different opinion, so let's hear Kavouss.

KAVOUSS ARASTEH:

If you have any preference for the options because it might be an additional option, a combination of both. The situation is that who will

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decide on the request? First of all, I don't think that any request should be directly mentioned or referred to the legal, whether it's ICANN Legal or the external legal. It should go through a co-Chair and to identify and authorize that yes, there is a question.

Second, many questions, many have already been answered during the Work Stream 1, directly or indirectly. There should be sort of the [sort out] whether there is not repetitive things and would not ask the legal team to provide pages of advice which has already been given of the subteam. This question should be clear before you go into option one and two, unless I have mistaken the process. Thank you.

MATHIEU WEILL:

Thank you, Kavouss. I think what you're describing is definitely what we're planning to make sure we don't duplicate previous requests and that requests are specifically reviewed before being certified, in both cases, actually.

Sebastien, you're next.

SEBASTIEN BACHOLLET:

Thank you, Mathieu. I think that we need to take advantage to [inaudible] the organization legal team. We are not in the same situation that in Work Stream 1, where we were in trouble with what the staff will, what the Board will do. I guess now with the new Bylaws, we are more aligned, and we need to take advantage of the knowledge and the capacity of work.

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I support the option one. I would like to support one additional point. It's that if ICANN Legal cannot provide the answer, maybe we can ask them to suggest which best external legal resources the group can use. It will be also better for budget purposes. Yes, we can spend all the budget we have, but we can also not spend the whole budget and it will not be bad either for the organization. Thank you.

MATHIEU WEILL:

Thank you, Sebastien. I think our group is not as uniform as it was on the previous questions on this, but maybe there's a way in combining both into reminding ourselves that there are many incentives to go to ICANN Legal first in as many cases as possible, but maybe not restricting formally the Legal Committee to do so would be a sign of trust for this committee, which is going to have to work within the budget limit anyway. What we can try to do is merge those two options and try to find the right balance, given the comments that we've heard in this discussion.

Indeed, it's always useful what ICANN Legal thinks, and I think they're absolutely central in this process.

Tijani, another input on this? You're welcome.

TIJANI BEN JEMAA:

Thank you very much, Mathieu. My problem with option two is that the use of the ICANN Legal will be based on the speed of their action. This is not fair in my point of view, since we are obliged to make our expenses of the legal advice less than for Work Stream 1, and maybe shorter for

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our budget if we consume all it by using the external advices. I think that we can use option one and have say that if the ICANN Legal give advice or have the solution and if the solution is accessible by the community, it's okay. Otherwise, we go to the external advice. Thank you.

MATHIEU WEILL:

Thank you, Tijani. That's a good point. I was not intending to put ICANN Legal under any pressure of speed. That's something that we can certainly incorporate into our new options three, which is going to merge both options.

Next is Holly. Holly, your input is much welcome in this discussion obviously on efficiency and cost management for future legal expenses. Holly.

HOLLY GREGORY:

I really just wanted to weigh in with a question at this point. I just want to make sure I understand option one. Would option one allow ICANN Legal to reach out for help from Jones Day, and if so, does that expense come out of this budget?

MATHIEU WEILL:

Any expense from Jones Day on this project is on this budget. That's something where we have quite clear responses from the Board Finance Committee on this. That's a yes.

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HOLLY GREGORY: Does that mean that if you have ownership of this budget, ICANN Legal is going to come to the Legal Committee for permission to use Jones Day on a project?

MATHIEU WEILL: Yes, that's the intent.

HOLLY GREGORY: Okay. If so, will the Legal Committee and this group have the access to the Jones Day advice, not subject to attorney-client privilege? Will it be the same kind of transparent advice that your independent counsel are required to give?

MATHIEU WEILL: That's a good question that I haven't got any written commitment on. I make a good note of it and turn it back to ICANN Legal to make sure we have clarity on this. Next is Kavouss.

KAVOUSS ARASTEH: Yes, Mathieu. People may be right in their argument in favor of either option one or option two. However, it seems to me that it cannot reconcile at this meeting because there might be other issues to be further studied and developed. I'm still thinking of a merging or combination of useful elements of option one and two together with the comments that we have received. Perhaps since this issue is not very urgent, you come up with an alternative for the next meeting. Thank you.

MATHIEU WEILL: Thank you, Kavouss. That was indeed the intention, but as usual, you are one step ahead of me. Next is Tijani.

TIJANI BEN JEMAA: Thank you, Mathieu. Holly raised a very important point that I didn't think about. Since the expenses of Jones Day are taken from our budget, this will make the ICANN Legal advice, if it is only legal advice from our staff, it should be good, but if our staff will go to Jones Day and we will have to spend money for Jones Day, it is exactly the same as if we are asking Holly or [inaudible].

The [cost] and budget will not be expected in this case. We need to formulate those options so that we give the priority to the ICANN Legal without the help of Jones Day. If they need the help of Jones Day, in this case, perhaps we prefer to go to our external legal advice. Thank you.

MATHIEU WEILL: Thank you. That's also a good point. That was a useful discussion for us to make sure we find a common ground solution, which we'll try to draft in the next coming days. We will certainly circulate it to the group. If it requires additional discussion, we may organize a second reading specific meeting on this. I think the expectation from the Board was to have the discussion closed by the end of July, so we still have some time, but I'm not sure we'll have room for a full CCWG meeting with any more agenda items. We might be dedicated, topic-focused meeting that we organize to make sure we can conclude this.

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Action item for the co-Chairs with the help of the PCSG once again is to draft an approach on this based on this discussion. Then we'll circulate on the list, as well as to ICANN Legal and our independent counsel to get feedback. If need be, we'll be organizing a second reading so we can conclude.

Holly, I assume this is a new hand.

HOLLY GREGORY:

Yes. I just wanted the opportunity to say. Rosemary may want to weigh in, as well. We're committed to trying to find a way to work with you in the most efficient way possible. We do have some concerns about option one, and I think that I've signaled what some of those concerns are from the questions that I've asked. I don't know if now is the time to talk about the impact that we think some of these may have on efficiency, but I just put that out there that at some point, we should probably have a discussion around that.

I'll just give the for example. We agree that going into Work Stream 2, it makes sense to try to rely where you can a little bit more heavily on ICANN Legal for simple, basic things, places where the group just needs to get educated a bit, and use us more strategically when the real need is there. I just want to highlight that if we're not following things along, when you reach out to us with a question, we may not be able to respond as quickly as we have tried to in Work Stream 1.

I also understand that that may not be as important because you have a different time frame. I think in Work Stream 2, you're going to have to expect that we may need more time, because we're not up to speed on

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the discussion that's going on because we're not following as closely the list and the calls. We probably are not participating in a lot of calls and not following the discussion on the list.

In addition, when an issue may come up, we may be inundated with some other project, so we're not sort of reserving staff time. I just want to put that out there so you're aware of it. I don't expect it should cause huge problems though, and I don't know Rosemary if you wanted to weigh in.

ROSEMARY FEI:

I do think Work Stream 2 will be at a much slower pace, but it does seem as though even if the process of requesting legal advice means it takes a week or two longer, if that's what you want. Of course, that's what you want, but I want to agree with Holly's point: we're going to need longer turnaround times. So however long it takes to get to us, whether it goes through an ICANN Legal vetting first or they give you an answer that someone doesn't like, that's not – I don't think it's going to work from our perspective, if that somehow shortens the time that we have to deal with it at the end. We're going to need more turnaround time, because we're not going to be plugged in, because we won't be able to anticipate needs and arrange staffing ahead of time.

MATHIEU WEILL:

Thank you, Rosemary.

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ROSEMARY FEI: On the efficiency point, I'd like to ask the question whether the plan is to have the Legal Committee – whichever option you pick – when it's picking, would you, would the Legal Committee decide whether an issue should go to Sidley versus to Adler, or are we going to continue to work as we have in the past, as a sort of almost coequal team so that we've been able to make that a decision internally? There might be an opportunity for efficiency if actually Sidley got the questions on anything you want to ask of external counsel, and she would be able to bring us in as she deems necessary. I think that might be very efficient, more efficient than what we did on Work Stream 1, but it's just a thought, and I don't know what you had in mind. With the way this is phrased, I can't tell if it's about specific firms or about sort of Sidley-Adler as a group.

MATHIEU WEILL: Thanks, Rosemary. Honestly, we hadn't gone into that detail, so that's a very good comment from you that will help us refine that moving forward to make sure we're clear on this. Theresa, I see your hand is up. Welcome, Theresa.

THERESA SWINEHART: Thank you, thanks very much. Actually, Sam had asked that I put the hand up, because she's not in the Adobe room, so I'm doing that on her behalf.

MATHIEU WEILL: Welcome, Sam, then.

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SAMANTHA EISNER:

Thank you, hi, this is Sam Eisner from ICANN Legal. Sorry, I was kicked out of the Adobe room for a period of time, I just got back in. I just wanted to say from the ICANN Legal standpoint that we're looking forward to working with both the CCWG as well as Sidley and Adler on helping to design the best way to get the most efficient legal advice that the group believes that it needs, be it from ICANN or from other sources in, in order to complete the work that needs to be done, and we stand ready to assist the group.

We have a lot of internal competency, not just in the actual legal work, but also in working with external counsel and helping to scope questions and helping to identify those sorts of things, so we hope that as an option three emerges, you can consider us in that way too, as a way to help the CCWG from the cost management and expertise side as well. So however you would like to tap into us, we stand ready to help.

MATHIEU WEILL:

Thank you very much, Sam, and I think we've all had the opportunity, for instance in the drafting teams and end phase of Work Stream 1 to realize how much expertise and goodwill there is within ICANN Legal. Kavouss.

KAVOUSS ARASTEH:

Yes, Mathieu. I think there was a reason why for the Work Stream 1, although the question here is different from that. We had two advisors or two legal entities and so on and so forth, so we should not decide

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that the action will be taken by this one or that one. That is something that we should not opt for any of that. I think the common advice about in the previous arrangement they were very comfortable for all of us, so I do think that we should decide on that, that this work will be done by this and the other should be done by that, or vice versa. Thank you.

MATHIEU WEILL: Thank you, Kavouss, your comment is well noted. Pedro.

PEDRO DA SILVA: Yes, hello, can you hear me?

MATHIEU WEILL: Yes, very well, Pedro. Welcome.

PEDRO DA SILVA: Okay, thank you. Yes, my comment is actually similar to Kavouss's, actually. I think my understanding in Work Stream 2 was that – especially because the jurisdiction discussion – is that it's very probably that we may reach out to expertise that actually lies beyond those of ICANN Legal and the current firms that have been supporting our CCWGs. So I think the Legal Committee should be as independent as possible from – let's say those legal teams, just let's say reach out to them when required, but the decision on, let's say, what firm to consult needs to lie within the Legal Committee, which is formed by members and participants of the CCWG. I just wanted to make sure that we may

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reach out to, let's say, firms other than the ones that we have been reaching out so far. Thank you.

MATHIEU WEILL: Thank you, Pedro. The point is noted, I think that's something consistent with previous comments you've made. Tijani.

TIJANI BEN JEMAA: Thank you, Mathieu. [inaudible] agree with my predecessor. I think that the main point here is the budget restriction. We need to make our expenses, our legal expenses less than we used to have it in Work Stream 1. That's why I think when we need to have external legal advice, we should go to one of the two firms, and if the answer is satisfactory for the community, it is okay. If not, if we feel that we need another point of view, we go to the other one. I think we have to be very careful with budget, because when we run out of it, I don't know how we'll continue to do our work and finish our work. Thank you.

MATHIEU WEILL: Thank you, Tijani. I think it's in our [present] discussion on this note, but we need find a balance here. I'm confident we can write an options 3 on the basis of this discussion, which would address most of the comments made. I've noticed a lot of constructive suggestions made by participants, but also our legal firms and ICANN Legal, so I'm very confident we can find a reasonable balance. We'll share it on the list and for discussion on the list, and if need be, during a dedicated call in the next couple of weeks, so I think we can conclude this. It's important that

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we make this process very clear, both from a financial responsibility viewpoint, but also from the viewpoint of ensuring we have set our rules clearly in advance, so that when tension rises – and certainly at some point in Work Stream 2 there might be tensions.

I'm not wishing for tensions, but experience shows that it might happen. Our rules are clearly set out so that no one can challenge them on the basis of being invented as we move, so that's why I think it's worthwhile spending a little bit of time now setting this straight, so that we can then proceed with more focus on the substance of the subgroups.

So with that, I think we have concluded item number four with action items on the co-Chairs and staff to circulate this new draft, and I'd like to call for Any Other Business, if anyone has a point they want to raise now. Kavouss.

KAVOUSS ARASTEH:

Yes, I think you have answered this question implicitly before, but with respect to the physical meeting of the plenary or CCWG, I understood from your previous intervention in an implicit manner that we have this physical meeting at every ICANN meeting. Is that confirmed? And you and me, co-Chairs and with the group decided that, but not at ICANN, and we don't want that to go and ask "Should we have that?" And instead of yes, they will go and check and we come back to you and say yes or no. we should have some very clear and definitive program to arrange. Thank you.

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MATHIEU WEILL: Thank you, Kavouss. Indeed, we've had agreement that we will have a face-to-face meeting the day before each ICANN meeting starts, so we still need to make sure that we have the dates set right. I think Hyderabad starts on November the 3<sup>rd</sup>, so I would assume we would have a meeting on the second, but certainly, let's have an action item for staff to double check that so we can share with the whole group the dates of the face-to-face meeting, at least for ICANN 56 and 57 to start with, so that we can all plan accordingly. I see Olga's hand is up. Olga?

OLGA CAVALLI: Hello, Mathieu, can you hear me? Yes. Can you hear me?

MATHIEU WEILL: You're alright.

OLGA CAVALLI: Thank you. If somehow Kavouss was asking and my connection was down for a while, so maybe you said it. It could be good to know the dates as soon as possible. The trip from South America is quite long, so the sooner that we make arrangements for the trips, the better, so that's all my comment. Thank you.

MATHIEU WEILL: Thank you, Olga, and indeed I know your connection broke down, but that was the action item we were agreeing on, for staff to confirm those dates as soon as possible. Since the principle has been agreed, we need to confirm the date. In terms of travel support, we will have the ability

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for 20 members supported, so what we will have to do is arrange a transparent process to allocate those slots on request, and that's probably also another action item to inspire from existing procedures within ICANN, within constituencies or SO or ACs with that regard, so that we set up a clear and transparent process to allocate that as soon as possible, so that we can all plan accordingly.

How many less travel slots? I'm not sure I understand your question right, Robin, but 20 was picked on the basis of the previous face-to-face meeting from ICANN, where we roughly found out that 20 seats were the number of travel slots that were supported by the CCWG for each of these meetings. So I hope that's clarified.

Kavouss, is that an old hand or a new hand?

KAVOUSS ARASTEH:

Yes, it is a new hand. Selection of the day for physical meeting depends on the type of the meeting. ABT, BVT and CVT, it is different. Certainly for the B type meeting, the day of the CCWG should be before the start of the four days. With respect to the CVT, which is seven full days, it could be inside those. So it cannot be identical for all meetings. It depends on the type of the meeting. The next one would be the meeting C, seven-day meeting from two to nine. Therefore, when you decide, you should take that into account. But as Olga said, as soon as possible, we need to have that one, because arrangement of the travel with a fixed date will be less costly than the flexible. Thank you.

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MATHIEU WEILL: Thank you, Kavouss, that's precisely why we need to set the dates straight, because the structure of the meeting is changing. So I'm a little confused with all that, but it's not as easy as it was previously, where people had the Friday, the Saturday well in mind in terms of planning.

Oh, Tijani is back in the queue. Tijani, another comment?

TIJANI BEN JEMAA: Okay, thank you, Mathieu. I don't think we can have CWG meeting inside the seven days of the meeting C, because meeting C was designed to have seven days of work, so if we take off one of those days, it will be a problem. And it depends on the [inaudible] of course, but for the Meeting Strategy Working Group, the seven days were working days for the community, so we cannot take off one of them and use it for the CWG. Thank you.

MATHIEU WEILL: Thank you, Tijani, your comment is well made. So we have these action items for staff, we see those areas need to be clarified sooner rather than later, so we can arrange adoringly.

Holly, one last comment?

HOLLY GREGORY: Sure, this is in response to some of the discussion that's been in the chat room. There was recently a question about our expertise in the human rights area, and also there was a suggestion of it in the jurisdiction area. At another time, I would be happy to share with you

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the breadth of our practice. We're a full service international law firm with offices and practices all over the world. We're well positioned to advise both on the human rights issues and those jurisdiction issues, and I can share more information about those capacities with you if you would like. At the same time, we fully understand if you decide at this point you'd like to go with another law firm.

MATHIEU WEILL:

Thank you, Holly. I suggest we take this discussion at least to start with in the next meeting we'll organize with all rapporteurs to get the work going. I think that's going to be one of the discussion items we can have with the rapporteurs. I think that will be the right place to start this discussion.

Okay, so that's pretty significant any other business, we have action items on the dates and action items on the process to allocate the travel support for the meetings, and obviously, an upcoming action, which will be to gather all rapporteurs with the co-Chairs in order to kick start the various subgroups.

That would be my concluding remark will be that I'm looking forward to getting the subgroups to work. We have a lot to deliver, we are very well supported by ICANN, and I think there are a number of expectations on our work to deliver recommendations that are making a difference, and I'm sure with the great team that we've formed, we're going to astonishingly deliver once again in record time the recommendations that enhance ICANN's accountability, and I'm looking forward to being part of this.

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Rapporteurs will reach out to you for a Doodle poll or something to make sure we find the right date, and we'll also publish shortly more planning about upcoming meetings, so stay tuned for that, and in the meantime, I'm wishing you a good day, good night or whatever time it is for you, and talk to you very soon. Thank you very much for a very constructive meeting.

**[END OF TRANSCRIPTION]**